

# HOUSE BILL REPORT

## SSB 5672

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to commercial parking businesses.

**Brief Description:** Regulating commercial parking businesses.

**Sponsors:** Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Jacobsen, Esser, Poulsen, Benson and Swecker).

**Brief History:**

**Committee Activity:**

Commerce & Labor: 3/17/05, 3/31/05 [DPA].

### Brief Summary of Substitute Bill (As Amended by House Committee)

- Prohibits a parking charge unless there is a conspicuously posted sign on the parking lot indicating the times and circumstances in which a parking charge will be charged and provides for fees and penalties in the event of any violations.
- Defines what constitutes a conspicuous sign for commercial parking lots, and incorporates by reference the posting requirements of the Department of Licensing for impounding vehicles.
- Creates a separate burden of proof for a person who is not the registered owner of the vehicle but is contesting unauthorized parking fees, and allows the award of statutory costs and attorney fees to the prevailing party in contested parking actions.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; Crouse and McCoy.

**Minority Report:** Do not pass. Signed by 1 member: Representative Hudgins.

**Staff:** Rebekah Ward (786-7106).

**Background:**

Local jurisdictions have authority to regulate off-street parking by ordinance, and may generally choose to do so through a parking commission, a municipal operation, or a contract with a private entity. Private businesses may operate commercial parking facilities.

In July, 2003, a federal court in a class-action lawsuit ruled that a collection agent for several unstaffed parking lot operators did not have authority to charge a collection fee in addition to the principal amount owed on parking tickets issued by a commercial parking lot operator.

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### **Summary of Amended Bill:**

A commercial parking business is defined as the ownership, lease, operation, or management of a commercial parking lot with a purpose of parking motor vehicles for a fee. Parking fees may be charged for monthly parking, reserved parking, parking for a given amount of time, or a specific event. Fees for unauthorized parking, late fees, and collection fees are also permitted.

### Posting Requirements

Charging a parking fee is prohibited unless the commercial parking business posts a sign conspicuously stating the times and circumstances in which a fee will be charged, the amount of the charge, or a schedule of different rates or different schedules, and the name, address, and telephone number of the commercial parking business. The sign must be posted in such a manner as to be clearly visible at all times, including after dark.

The Department of Licensing's posting requirements for the impoundment of vehicle are also adopted by reference, and impoundment of an unauthorized parked vehicle is prohibited unless a sign is posted near the entrance of the property in a clearly conspicuous and visible location to all who park on the property indicating the times a vehicle may be impounded, and the contact information where the vehicle can be redeemed.

A commercial parking business need not post the fee sign if the commercial parking business:

- has an agreement for the parking services with the customer; and
- gives the customer the required information in written form when they enter the parking lot; or
- for event parking, an attendant or signage gives the customer the required information upon entry into the lot.

### Impoundment

Impoundment of an unauthorized parked vehicle is not allowed unless:

- the unauthorized parking constitutes a traffic hazard or obstruction;
- a customer of the business requests removal because the unauthorized car is occupying the customer's reserved space;
- the business has twice notified the registered owner of the parked car, and has either collected or attempted to collect the unauthorized parking fee, and has at least in one notice notified the customer that the vehicle is subject to impoundment; and

- the impoundment is immobilization or impound-in-place.

Additionally, certain posting requirements must also be met in order for a commercial parking business to utilize impoundment for unauthorized parked cars.

#### Charges for Unauthorized Parking

A customer whose parking is unauthorized is liable to the commercial parking business for a reasonable parking charge if notice of the charge is given to the customer. Where a customer fails to pay within fifteen days after notice is given, the registered owner of the vehicle is liable to the commercial parking business for the reasonable fee. Additionally, charges may include a late fee of up to \$25, any collection agency fees, and/or statutory costs and reasonable attorneys' fees that are incurred if court action is taken.

#### Notice of Parking Charges

Reasonable parking charges may not exceed the posted price or \$50. If a fee other than the posted fee will be charged, or if a late fee or collection fee is to be charged, then the amount of the charge must be stated in a sign conspicuously posted on the parking lot. In addition, written notice of a violation must be either affixed to the windshield of the car in violation, mailed, via first class mail postage prepaid, to the registered owner of the car in violation, or delivered in another commercially reasonable medium to the registered owner. The notice must describe how the reasonable fee was calculated, the date(s) of the unauthorized parking, the license number of the vehicle, and the name and address of the commercial parking business. The notice must be mailed within 90 days of the unauthorized parking or within 90 days of the bill's effective date, whichever is later.

Where a collection fee is assessed, the commercial parking business must provide notice to the registered owner of the vehicle of the possibility of assignment of the debt to a collection agency at least fifteen days prior to the assignment. A fee of up to \$100 or 50 percent of the debt over \$100 is presumed reasonable.

A parking business may give the registered owner of the unauthorized parked vehicle more than 15 days to pay reasonable parking charges prior to assessing a late or collection fee. The parking business also may discount the parking charges if they are paid within a certain amount of time.

#### Presumption of Liability for Parking Charges

A registered owner is presumed liable for his or her vehicle in a commercial parking lot unless the owner can prove by preponderance of the evidence that the person who parked the vehicle in the commercial parking lot was unauthorized to do so. Notice provided to the registered owner of the vehicle will be presumed to have been provided to any party responsible for the parking charges associated with the vehicle.

Additionally, there is a preponderance of the evidence standard created for contesting unauthorized parking fees for persons other than the registered owner of the vehicle, and the burden is placed on the person contesting the charges.

A court can award statutory costs and attorneys' fees to a prevailing party in a contested parking fee action.

Nothing precludes a claim from being taken to small claims court.

#### Other

These provisions apply to all parking charges incurred on or after the bill's effective date.

#### **Amended Bill Compared to Substitute Bill:**

There were three amendments to the substitute bill. The first amendment creates a requirement that the Attorney General monitor and report to the House Commerce and Labor Committee, and the Senate Labor, Commerce, Research, and Development Committee regarding consumer complaints received by the Attorney General related to private commercial parking businesses, collection agencies, and charges and fees assessed by such businesses and agencies in the previous year. The second amendment requires specific times of the unauthorized parking occurrence for which the customer is being charged as well as any late fees to be specified in the written notice provided to the customer by the private commercial parking business. The third amendment changes the definition of unauthorized parking to include the requirement that stalls or areas be clearly designated.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Higher parking fees are paid by innocent consumers to make up for lost revenue due to habitual offenders who fail to pay their parking charges and fees. There are some instances where more than 30 notices have been issued to an individual who has engaged in unauthorized parking, and the past due notices that are sent in the mail are not always enough to effectively collect the charges and fees.

Eighty to 85 percent of parking operations are private commercial businesses. Ninety-five percent of such businesses are operated on behalf of private property owners. There are approximately 10,000 cases a month where there has been a failure to pay the charges for unauthorized parking. This results in \$3 to \$6 million per year in lost revenue. One quarter of this lost revenue is lost by the State of Washington in sales taxes.

This bill is critical because of the Attorney General's interpretation of buildings which gives no ability to go after past due parking charges and fees. Currently, there is a better chance of collecting from someone who writes a check with insufficient funds than there is from someone who does not pay at all.

Collection agencies are involved in the enforcement of commercial parking charges, and there are consumer protection measures in place to afford consumers an opportunity to dispute the charges even prior to the debt being assigned to collections. There are also a variety of resources available to collection agencies to locate individuals which are not always available to commercial parking businesses. On average it takes about three letters to locate an individual. Collection agencies are generally utilized by publicly owned lots, and allowing the use of these agencies by privately-owned lots would level the playing field.

The signage requirements also put consumer protection measures in place by informing consumers of all policies and procedures related to the commercial parking business. The past problems with habitual offenders are the reason for the impoundment provisions.

**Testimony Against:** None.

**Persons Testifying:** Senator Jacobsen, prime sponsor; Judy Warnick and David Grimm, Washington Collector's Association; Gary Beck, Building Owners and Managers Association; and Troy Harris, Building Owners and Managers Association and Washington State Parking Association.

**Persons Signed In To Testify But Not Testifying:** None.